

New Jersey's Long Road Ahead
Taxpayers vs. Politicians and Unions
Americans for Prosperity Foundation, New Jersey
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New Jersey: A State in Peril

For years, union officials in New Jersey have gotten politicians from both parties to give in to their incessant demands for lavish taxpayer-funded benefits. Today, New Jersey has the highest property taxes in the nation and the highest per-pupil school spending. This has resulted in the largest state population loss¹ in the nation and a massive budget deficit.

Fortunately, the deficit-friendly approach to budgeting is falling out of favor, as state and local governments feel the squeeze from public employee compensation. The spectacle of government employee unions lobbying for expanded benefits, even as private sector workers experience layoffs, has not played well with the voting public. Many now support the effort to rein in public sector compensation. However, New Jersey still has a long way to go on the road to fiscal sustainability and economic competitiveness.

New Jersey's current situation is not pretty. New Jersey residents pay the highest property taxes in the nation—averaging \$7,300 per homeowner.² The state has the highest per-pupil spending at \$17,600 per student.³ The unemployment rate is 9.1 percent and continues to exceed the national average.⁴ The state's long-term debt is one of the highest in the country.⁵

Government Unions and New Jersey

In 2009, for the first time, more union members in the United States worked for government than for the private sector. This is a fundamental shift in the makeup of organized labor. Private sector unions are limited in what they can demand from employers, because they have an incentive for employers to

¹ United Van Lines, "Great Lakes Region Leads Nation in Outbound Traffic, Growth Slows In Western States, According to 2010 United Van Lines Migration Study" January 3, 2011 http://www.unitedvanlines.com/united-newsroom/press-releases/2011/documents/2010-migration_000.pdf

² Associated Press, "Christie and Democrats Reach Compromise." *New York Times*. July 3, 2010. New York Times. "<http://www.nytimes.com/2010/07/04/nyregion/04jersey.html>

³ Jennifer Cohen, "Examining the Data: State Per Pupil Expenditures and State Graduation Rates." New America Foundation. September 16, 2010. <http://edmoney.newamerica.net/node/36914>

⁴ April 2011 <http://www.bls.gov/news.release/laus.nr0.htm>

⁵ Duncan Currie, "National Review: The Swamps of New Jersey: How the Garden State Fell into Decline." October 5, 2009.

<http://nrd.nationalreview.com/article/?q=Mjc0ZjhjMzRkNmIxYjA0MmQzNmM1MmZkMGEwNjFmNzQ=>

remain in business. By contrast, public sector unions have no incentive for any such restraint, because governments do not go out of business. In fact, unions, through their political activity and donations, work to elect their own bosses. Moreover, agency bureaucrats face the same incentive as the unionized workers they supervise: to get more taxpayer funding.

This shift of unionism from a private sector to a mainly public sector phenomenon occurred even as overall union membership was falling. Unions lost over 612,000 members in 2010, most of them in the private sector. In 2010, 7.6 million government workers belonged to a union, while only 7.1 million private sector workers did. Only 11.9 percent of all wage and salary workers, public and private, are union members, and the percentage of union members in the private sector is a mere 6.9 percent.⁶

The membership fall-off is striking even in union-friendly New Jersey. The percentage of New Jersey workers represented by unions fell from 19.9 percent in 2009, to 17.7 percent in 2010. Actual union membership was even lower—falling from 19.3 percent in 2009 to 17.1 percent in 2010.⁷

Still, New Jersey has the fifth-highest percentage of government sector union members: 59 percent of government workers are union members and 60.6 percent are covered by union contracts. In New York, the number-one state for government union membership, 70.5 percent of government workers are union members and 72.9 percent are covered by union contracts.⁸

The Pension Problem and Steps in the Right Direction:

In June, the New Jersey General Assembly gave its final approval to pension and health care reforms that would have been unthinkable a few years ago, when organized labor's political power was enough to block any attempts at reform. However, hard financial realities have made those reforms not only necessary but also politically viable.

New Jersey is currently saddled with over \$110 billion in unfunded pension liabilities and health insurance costs. A study from the Mercatus Center at George Mason University shows the state actually owes more than \$170 billion in pension costs when using private-sector accounting methods.⁹ The estimate is five times more than the FY 2011 budget and over 40% of the Gross State Product.¹⁰

New Jersey state workers fall into five separate pension systems: the Teachers' Pension and Annuity Fund (TPAF), Public Employees' Retirement System (PERS), Police and Firemen's Retirement System

⁶ Bureau of Labor Statistics, "Union Member Survey 2010" January 21, 2011
<http://www.bls.gov/news.release/union2.htm>

⁷ *Ibid.*

⁸ "Union Membership, Coverage, Density and Employment by State, 2010" www.unionstats.com – *The database, constructed by Barry Hirsch (Andrew Young School of Policy Studies, Georgia State University) and David Macpherson (Department of Economics, Trinity University), is updated annually.*

⁹ Many states greatly overestimate the return they will receive on their investment each year. By assuming greater returns the state can put less money toward their pension obligations. This is called a discount rate. New Jersey historically discounted its pension liabilities at 8.25 percent. The median private sector discount rate at the end of 2010 was 5.40 percent; Eileen Norcross, Andrew Biggs "The Crisis in Public Sector Pension Plans" [Mercatus Center](http://mercatus.org/sites/default/files/publication/WP1031-%20NJ%20Pensions.pdf), June 2010 <http://mercatus.org/sites/default/files/publication/WP1031-%20NJ%20Pensions.pdf>; "PwC Finds Drop in Pension Discount Rates, Projected Returns." [Plansponsor.com](http://www.plansponsor.com), July 11, 2011
http://www.plansponsor.com/PwC_Finds_Drop_in_Pension_Discount_Rates_Projected_Returns.aspx

¹⁰ Norcross, Biggs.

(PFRS), State Police Retirement System (SPRS), and Judicial Retirement System (JRS). If the state made its full annual contribution to all the pension systems—which the recent pension reform law will require after a seven year phase-in period—the total would be \$3.5 billion or more than 10% of next year’s proposed budget.¹¹

This year’s pension reforms could dramatically improve New Jersey’s fiscal outlook. The new law means that employee contribution rates in PERS and TPAF will be increased from 5.5% of their annual salary to 7.5%, while contributions to PFRS will rise from 8.5% to 10%. Moreover, new members of PERS and TPAF will be required to accrue 30 years of service at age 65 to qualify for early retirement. The changes also eliminate automatic annual Cost-of-Living Adjustments (COLAs) for current and future retirees, unless they are re-enacted by the Legislature.¹²

PERS and PFRS retirees will be prohibited from collecting full retirement benefits while simultaneously holding elected offices that allow them to earn further pension credits. The reform package also increases contribution rates for benefits on a sliding scale that is related to income. Employees will pay at least 1.5% of their salary toward health benefits and up to 30% of the cost of their insurance. Similar increases will be required of retired workers, unless they have 20 or more years of service.¹³

A new, less expensive insurance plan for public employees is also included. This will give all public workers the option of paying a lower premium by providing an alternative to the current “Cadillac plan” for health insurance that is now the standard.¹⁴

The U.S. Department of the Treasury predicts the reforms will “save the state and local governments a combined \$3.9 billion in pension obligations in the first ten years and \$120 billion over 30 years. The Department also expects the state and localities to save \$3 billion by the tenth year in health care costs.”¹⁵

Lavish Benefits Funded by Your Tax Dollars

Big Labor’s Political Might and the Vicious Circle

For years, government unions in New Jersey have been a political juggernaut that has grown accustomed to calling the shots. Seeking money and political support, candidates promise these unions the moon. Once elected, they deliver and promise to give more so the unions will help with their re-election bids. Everyone is happy except for the taxpayers who get stuck with the bill. However, times are changing. The fact that unions are not always getting their way suggests that the public is finally saying, “enough is enough.” There is much damage to be undone.

Pushing back against the taxpayer, the New Jersey Education Association (NJEA), the state affiliate of the National Education Association, is one of the most powerful unions in New Jersey. The union’s influence

¹¹ *Ibid.*

¹² Paul Tyahla. “Legislature Passes Landmark Pension and Benefit Reform Package” [The Common Sense Institute of New Jersey](http://www.csinj.org/2011/06/legislature-passes-landmark-pension-and-benefit-reform-package/) June 23, 2011 <http://www.csinj.org/2011/06/legislature-passes-landmark-pension-and-benefit-reform-package/>

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

has led to higher property taxes and blocked reforms. While it favors the Democratic Party, NJEA also maintains influence with a sizable number of liberal Republicans who keep taxpayer-funded public employee benefits flowing.

With 200,000 members and \$100 million in dues, the NJEA has historically had the power to make or break state officeholders.¹⁶ In 2010, according to *The Bergen Record*, the NJEA's political action committee spent \$522,000 on the unsuccessful re-election campaign of former Democratic Governor Jon Corzine. The union gave campaign contributions to 94 percent of state legislators, both Democrat and Republican, over the past five years.¹⁷

The NJEA has been a persistent opponent of school choice initiatives that would help break up the public school monopoly and anything that affects its dues or power. The most recent example is the union's vitriolic opposition to the Opportunity Scholarship Act (S-1872/A-2810), a private school voucher bill. The NJEA argues that the bill will "drain \$1 billion in state funding from public schools."¹⁸ The legislation would give the poorest children in New Jersey the ability to choose which school to attend. The problem for the NJEA is that the children may choose better private schools that are not unionized. The opposition is less about the children and more about job security and collecting dues.

No Secret Ballot in State Employee Union Organizing Elections

Although the card check and binding arbitration provisions of the so-called Employee Free Choice Act never saw the light of day on Capitol Hill, they remain in full force for many New Jersey government workers.¹⁹ The National Labor Relations Act and the Railway Labor Act, cover most private sector employees, but not a few specific types of workers, including state and municipal employees, who are covered under state laws and regulations.

In 2005, New Jersey became one of several states where government unions can organize workers through a process known as card check elections, when then-Acting Governor Richard J. Codey signed A-1820/ S-194 into law.²⁰ In a card check election, a union can be formed by a majority of employees simply signing cards out in the open. Card check takes away a worker's right to vote to join or refrain

¹⁶ *Ibid.*

¹⁷ Leslie Brody and Patricia Alex "The NJEA vs. Governor Christie: Two powerhouses doing battle" [North Jersey.com](http://www.northjersey.com/news/85754237_The_NJEA_vs_Governor_Christie_two_powerhouses_doing_battle.html), February 28, 2010 http://www.northjersey.com/news/85754237_The_NJEA_vs_Governor_Christie_two_powerhouses_doing_battle.html; Sources: NJEA, Record analysis of campaign finance and lobbying reports filed with Election Law Enforcement Commission, Record analysis of Department of Education data

¹⁸ NJEA. "Voucher Bill Lurking in New Jersey. (<http://www.njea.org/issues-and-political-action/vouchers>)

¹⁹ Other workers not subject to National Labor Relation Act include workers: employed as agricultural laborers, employed in the domestic service of any person or family in a home, employed by a parent or spouse, employed as an independent contractor, employed as a supervisor (supervisors who have been discriminated against for refusing to violate the NLRA may be covered,) employed by an employer subject to the Railway Labor Act, such as railroads and airlines, employed by Federal, state, or local government, employed by any other person who is not an employer as defined in the NLRA see. <http://www.nlr.gov/faq/nlr>; National Labor Relations Act 29 U.S.C. §§ 152 <http://www.nlr.gov/national-labor-relations-act>, National Railway Labor Act 45 U.S.C. §§ 151 <http://www.nmb.gov/documents/rla.html>

²⁰ "Acting Gov. Codey Signs Bills into law" State Of New Jersey Press Release July 19, 2005 http://www.state.nj.us/cgi-bin/governor/njnewsline/view_article.pl?id=2642; ftp://www.njleg.state.nj.us/20042005/S0500/194_U1.PDF.

from joining the union by voting in secret.²¹ This may lead to pressure tactics and even intimidation by union organizers.²²

Interest Arbitration: When unelected bureaucrats rule and voters lose

Many decisions that cost taxpayers money are out of the hands of voters and their elected officials. Over 30 years ago, the New Jersey State Legislature instituted interest arbitration as a way to settle public safety labor contracts. The process results in large portions of collective bargaining negotiations being done by unelected bureaucrats, not locally elected officials. Thus, the voters have little to no say. Interest arbitration has translated into burdensome mandates for municipalities, which have been forced to cut back on other services in order to cover their skyrocketing payrolls.²³

Some states and municipalities gave interest arbitration to police and firefighters in exchange for them not being allowed to strike.²⁴ Over time, the interest arbitration process has led to escalating public safety salaries, as it has locked in raises, leaving elected officials with little room to maneuver. In many cases, elected politicians are powerless to curb these excesses. The bureaucrats who make the decisions are not accountable to voters, and thus have no incentive to resist union demands. As a result, they consistently give in to heavy union lobbying—at the expense of taxpayers.

Challenging an arbitrator’s decision can be difficult and costly. Consider the following example. In 1998, the then-Mayor of Bogota, New Jersey, Steve Lonagan, scored a rare victory over the arbitration system. The Police Benevolent Association (PBA) demanded that civilians not be allowed to serve as dispatchers, unless the changes were negotiated with union leaders. Instead of hiring additional police to patrol the streets, Mayor Lonagan had some of the existing officers move from behind the desk and onto the street.

By hiring civilians who were not paid as much as police officers, Mayor Lonagan was able to provide substantial savings for the taxpayers of Bogota. The mayor asserted that these changes were “management’s prerogative” and not a negotiable issue subject to union bosses’ permission. An arbitrator disagreed and ordered that only police could operate as dispatchers. After costly and lengthy litigation the New Jersey Public Employment Relations Commission ruled in favor of the mayor.²⁵ The

²¹ States with card check laws include: California, Connecticut, Illinois, Iowa, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Jersey, New York, North Dakota, Ohio, Oklahoma, Oregon, Washington, and Wisconsin. For a complete list of state labor laws see the U.S. Department of Labor, Wage and Hour Division website “State Labor Offices” http://www.dol.gov/whd/contacts/state_of.htm
In June of 2011 the New Hampshire Legislature passed HB 0589 repealing Card Check. <http://www.gencourt.state.nh.us/legislation/2011/HB0589.html>

²² Testimony of Clyde H. Jacob III, ESQ; Jones Walker, New Orleans, LA Before the United States House of Representatives Subcommittee on Employer-Employee Relations; Committee on Education and Workforce. Washington DC

²³ Linda Stamato. “State Mandates and Municipal Burdens: Another Challenge for Christie.” January 14, 2010 <http://www.hallnj.org/index.php/topics/37-economic-immigration-and-social-policy/636-state-mandates-and-municipal-burdens-another-challenge-for-christie>

²⁴ Salvador Rizzo. “Thousands of New Jersey Police Officers and Firefighters Protest at Statehouse Over Potential Budget Cuts.” NJ.com March 4, 2011 http://www.nj.com/news/index.ssf/2011/03/thousands_of_nj_police_officer.html

²⁵ State of New Jersey before the Public Employment Relations Commission No. 99-20 In the Matter of Borough of Bogota v. PBA local No. 86. (1998)

PBA appealed the Commission's decision to the New Jersey Supreme Court, which ultimately denied disposition and tossed out the case.²⁶

"The system is stacked against us," said Lonegan. "We all support the police; we just don't want to go bankrupt doing it." Lonegan and his constituents prevailed, but it should not have necessitated a costly multiyear court fight. The battle came at a time when going against a government union as strong as the PBA was thought to be political suicide but the victory paved the way for the type of collective bargaining reforms we see today and set the precedent for all other union claims to follow throughout the state.

New Jersey's Renegade Supreme Court

Working in a similar fashion as interest arbitration, New Jersey courts have taken decisions away from elected officials and turned them over to unaccountable elites. Beginning in 1973, the New Jersey Supreme Court has repeatedly interjected itself into education policy and forced tax hikes onto local residents in an effort to redistribute the wealth and bring funding for poorer school districts into parity with wealthier districts.²⁷ The Court has assumed the part of both legislator and executor of the laws, overstepping its constitutional role of simple interpretation. This works to the advantage of the NJEA because rulings translate into more taxpayer dollars funneled into the dysfunctional education bureaucracy.

For almost 100 years, no court viewed the funding mechanism underpinning K-12 education as a matter open to adjudication. In 1981, the advocacy group Education Law Center (ELC) brought a lawsuit (*Abbott v. Burke*) that resulted in a series of rulings known as *Abbott* rulings. As a result of the court's intervention, the state has been forced to pump billions of dollars into the so-called "Abbott Districts," which include cities like Camden, Elizabeth, Jersey City, Newark, Passaic, Paterson, Trenton and Union City. The idea is for poor districts to be put on an equal footing with wealthier districts.²⁸

In subsequent *Abbott* rulings, the court has ordered state officials to maintain equal levels of funding and to support supplemental programs aimed at boosting the quality of education in urban settings. Gregory Sullivan, a practicing attorney and columnist for the *Trenton Times*, decries an "imperial judiciary" at work that has violated the separation of powers. "How much money is spent and where has nothing to do with the constitution," he says. "It has everything to do with determinations by legislators and governors who are electorally responsible for their decisions. By contrast, it is essentially impossible to hold any court accountable for the squandered millions that have been judicially ordered for decades."²⁹

What is really at issue is a long overdue effort on the part of a tenacious chief executive to restore the court to its proper station in constitutional orbit. Unlike his predecessors, Governor Chris Christie (R) has

[http://www.perc.state.nj.us/IAAwards.nsf/IAUpdates/859268985201422D852568D4005285E6/\\$File/perc_99-20.pdf?OpenElement](http://www.perc.state.nj.us/IAAwards.nsf/IAUpdates/859268985201422D852568D4005285E6/$File/perc_99-20.pdf?OpenElement)

²⁶ *Policeman's Benevolent Association, PBA Local 86 v. Borough of Bogota*, 165 N.J. 489 (2000)

²⁷ Frederic Giordano, Shauna Peterson and Robert Miller. "The Federalist Society: Dollars and Sense: Understanding the NJ Supreme Court's Role in Education and Housing." September 1, 2009 http://www.fed-soc.org/publications/pubid.1643/pub_detail.asp

²⁸ *Ibid.*

²⁹ *Ibid.*

been willing to call out unelected judges who have coerced their overpriced, ineffectual policy preferences on the public and usurped the power to tax and spend from elected lawmakers.

Project Labor Agreements

Unions impose costs on taxpayers in addition to government employee compensations, through government project contracting rules that favor union firms. Union-friendly politicians achieve this through Project Labor Agreements (PLAs), which are negotiated between employers and unions before workers are hired. PLAs, which have a long history in New Jersey, require contractors, including non-union ones, to have a union represent their employees on government-funded construction projects. The National Labor Relations Act generally prohibits such pre-hire agreements, but makes an exception for the construction industry.³⁰

According to a study by the Massachusetts-based Beacon Hill Institute, PLAs raise construction costs by about 18 percent.³¹ Another study from Maurice Baskin, a law partner with Venable LLP in Washington, D.C. who represents construction employees, concludes that PLAs reduce competition and delay project completion.³² The agreement also requires non-union workers to pay into union benefit programs, which they will likely not work long enough to vest.

Both Republican and Democratic governors have accommodated construction unions by enacting PLAs on state projects. Since 1993, Governors Jim Florio (D), Christie Whitman (R), and James McGreevey (D) all signed executive orders opening the way for PLAs. (Governor Christie campaigned on reversing New Jersey's policy of mandating PLAs on government projects, but he has yet to make good on that pledge.³³)

Union favoritism to government maintenance projects do not even end with projects conducted by the state. In the twilight of his term, Governor John Corzine (D) signed an anti-privatization bill that forced local officials to pay union wages for maintenance projects such as vehicle maintenance, tree trimming and landscaping. That prevented them from saving taxpayer money by outsourcing these projects to private contractors.³⁴

Government officials do not deny that PLAs are costly and economically counterproductive. A 2008 New Jersey Department of Labor and Workforce Development report is revealing in that regard. It found that, "School projects that used a PLA tended to have higher building costs, as measured on a per square footage and per student basis, than those that do not use a PLA." In fact, they are 30.5 percent higher

³⁰ National Labor Relations Act 29 USCA 158

³¹ "New Study Reveals That President Obama's Executive Order for Project Labor Agreements Will Harm Federal Taxpayers" Beacon Hill Institute. September 23, 2009
<http://www.beaconhill.org/BHISTudies/PLA2009/PressReleasePLA090923.pdf>

³² *Ibid.*

³³ On the Christie campaign website, which is no longer active, his agenda's item No. 55, "88 ways Chris Christie Will Fix New Jersey includes this pledge to restrict the use of discriminatory and costly PLAs," reads: "I will eliminate special interest labor union giveaways that increase spending and taxes by ending the use of project labor agreements, which drive up the cost of public construction projects and fail to deliver a public benefit at a time when the economy is shedding jobs and taxpayers are struggling to make ends meet." 88 Ways Chris Christie Will Fix New Jersey. <http://thevisitingsscholar.blogspot.com/2009/11/88-ways-chris-christie-will-fix-new.html>

³⁴ New Jersey General Assembly November 30, 2009 http://www.njleg.state.nj.us/2008/Bills/A4500/4268_I1.PDF

than for all non-PLA projects. It also noted that, “PLA projects tended to have a longer duration than non-PLA projects.” For FY 2008, the average duration of PLA projects (12 of them) was 100 weeks compared with 78 weeks for non-PLA projects (60 of them).³⁵

While New Jersey is one of the more unionized states in the nation, a significant majority of its construction workforce—72 percent—is non-union.³⁶ PLAs essentially lock out the majority of workers from projects funded with their own tax dollars.

Conclusion

Recently New Jersey elected officials have made great strides in taking back the state from the grip of government employee unions. Much more needs to be done. The pension changes Governor Christie has advanced are actually quite modest and restrained in comparison to what other states have accomplished.

Other states are quietly surging past New Jersey in implementing cost-saving reforms. In April 2011, Ohio Governor John Kasich signed into law a major collective bargaining reform³⁷ that bans strikes by government workers and prevents unionized workers from negotiating healthcare, sick leave and pension benefits. The bill also does away with automatic pay increases and bases future raises on merit. Finally, the legislation gives elected officials the final say in contract disputes and does away with unelected bureaucrats writing unsustainable contracts through binding arbitration.³⁸ Savings estimates for the bill go as high as \$1.3 billion according to Ohio’s Department of Administrative Services.³⁹

The battles between entrenched government employee unions and taxpayers are far from over. New Jersey must continue to get its fiscal house in order, even if it risks a furious backlash from those who have fed at the public trough for years. The Christie administration’s pension reform signed into law earlier this year and budget cuts are a good start, but lawmakers must go further to fix our badly broken state. Recovery is possible but New Jersey still has a long road to go before it gets there.

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³⁵ Annual Report to the Governor and Legislature: “Use of Project Labor Agreements in Public Works Building Projects in FY 2008.” October 2008 http://lwd.dol.state.nj.us/labor/forms_pdfs/legal/2010/PLAReportOct2010.pdf

³⁶ “Union Membership, Coverage, Density and Employment by State, 2010” www.unionstats.com

³⁷ Julie A. Rishe, “Am. Sub. S.B. 5 Final Analysis” [Ohio Legislative Service Commission](http://www.lsc.state.oh.us/analyses/129/11-sb5-129.pdf) effective July 1, 2011 <http://www.lsc.state.oh.us/analyses/129/11-sb5-129.pdf>

³⁸ “Ohio Senate Bill 5 passes, restricting unions” [CBS News](http://www.cbsnews.com/stories/2011/03/02/national/main20038584.shtml), March 2, 2011 <http://www.cbsnews.com/stories/2011/03/02/national/main20038584.shtml>

³⁹ Ohio Department of Administrative Services “Senate Bill 5 Fiscal Analysis,” April 4 2011 http://das.ohio.gov/LinkClick.aspx?fileticket=CdxWiF2_VQo%3D&tabid=81